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SEMINAR ON THE INDEPENDENCE OF THE JUDICIARY 4TH - 5TH NOVEMBER 1988 EQUATORIAL HOTEL, KUALA LUMPUR

ASSAULT ON THE JUDICIARY PUBLIC PERCEPTIONS

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Assault on the Judiciary: Public Perceptions

by Dr Chandra Muzaffar

There is no denying this: no event, no episode in recent years has shocked the ordinary citizen as much as the suspension and then the sacking of the former Lord President, Tun Salleh Abas. The suspension of 5 Supreme Court Judges a little more than a month after Tun Salleh's suspension, followed by the dismissal of 2 of them, also sent shock waves down the spine of the nation.

Of course, not everyone was affected by the sacking of these three senior Judges. A huge segment of our society - leaving aside those who may be ignorant or illiterate - is known to be indifferent and apathetic when it comes to politics and public affairs. These Malaysians just cannot be bothered by issues such as the independence of the Judiciary or the rule of law or fundamental human rights.

Popular Concern Nonetheless, a lot of other Malaysians were concerned about Tun Salleh and the five suspended Judges (Tan Sri Wan Suleiman, Datuk George Seah, Tan Sri Azmi Kamaruddin, Tan Sri Eusoffe Abdoolcader and Tan Sri Wan Hamzah. The first / were sub- / two subsequently removed by a Tribunal. The last three were re-instated) as reflected in the result of the Johor Baru Parliamentary by-election. In that by-election, the first to be held after the

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*On the Roster of the Economic
Council of the United Nations.*

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suspensions and the sacking, the candidate who won, Datuk Shahrir Samad, made the assault on the Judiciary one of the most important issues in his campaign. From numerous accounts of voter sentiments, the sacking of Tun Salleh and the suspension of the 5 Supreme Court Judges, it is said, was that one issue which had the greatest impact upon the mind of the Johor Baru voter. It was largely responsible for Datuk Shahrir's mammoth victory margin of 12,613 votes over the candidate from the ruling Barisan Nasional. The Johor Baru protest against the assault on the Judiciary is significant for a number of reasons. It is one of the most multi-ethnic parliamentary constituencies in the country, a microcosm of the population structure of Peninsular Malaysia. Unlike other major cities in the country which had been badly mauled by the recession of 1985-87, Johor Baru has remained quite prosperous. If, in spite of this prosperity the majority chose to protest against the assault on the Judiciary, then that issue must have stirred the emotions of the people. Besides, the Barisan Nasional Government offered all sorts of inducements in the name of development in order to entice the voters. It must also be borne in mind that Johor Baru is a constituency that had always been in the hands of the ruling Coalition. In fact Johor is a State where the ruling Coalition has been almost invincible.

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The electoral verdict in yet another constituency in Johor - Parit Raja - can also be used as a measuring-rod of the people's feelings about what has been happening to the Judiciary. Though the Independent candidate who campaigned vigorously for the restoration of Tun Salleh as the Lord President lost, his narrow defeat was, nonetheless, indicative of sentiments in a rural State constituency. The dismissal of Tun Salleh and the other Supreme Court Judges, according to most analysts, was undoubtedly one of the most crucial issues in that by-election, ranking next to the UMNO crisis in importance.

Parit Raja and Johor Baru taken together show that rural and urban Johor, Johoreans of all communities and in all walks of life, are unhappy about the Government's assault upon the Judiciary. There is no reason to believe that these sentiments do not exist in other parts of the country. From my own interactions with individuals and groups, it is apparent that Malaysians in other places also regard the removal of the three Judges as a travesty of justice. The general feeling is that a terrible wrong has been done.

Difficult Perceptions The injustice itself is, however, perceived in different ways by different groups in society. The middle and upper classes especially those lawyers, academics,

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civil servants, business executives and so on, who are critical of the assault on the Judiciary tend to focus upon the hollowness of the allegations against Tun Salleh in particular. They are disgusted that the Executive had gone out of the way to knock down the former Lord President by exploiting and distorting every little word and deed of his in order to concoct a case against him. Thus, his attempt to explain why interpretation is part and parcel of the law is distorted to impute that Tun Salleh was advocating an Islamic legal system for the country. Thus, his adjourning sine die an appeal concerning a minor who had converted to Islam is given a mischievous connotation when in fact the former Lord President was only responding to an application from the Appellant's solicitors. Thus, some innocent comment he had made about budgetary allocations for the Ministry of Justice and the Courts is blown out of proportion with the intention of tarnishing his integrity.

Most of all, the middle and upper classes are piqued that Tun Salleh should be accused of undermining "public confidence in the Government's administration of this country in accordance with law" just because he had chosen to defend the Judiciary in the face of a barrage of attacks upon the Judiciary by the Prime Minister. In his excellent reply to the allegations against him, given its Islamic background. The Dadi who

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Tun Salleh has shown that he was merely performing his duty as the head of the Judiciary by clarifying what the independent authority of the Judiciary means, in a situation where the Prime Minister was making increasingly virulent criticisms of the institution.

It is interesting that among the working class in the urban areas it is not so much the hollowness of the allegations against Tun Salleh as the motive behind his sacking which appears to have angered them. They are clear in their minds that the former Lord President was removed because the Prime Minister and perhaps other leaders too were afraid that the Supreme Court quorum which Tun Salleh was planning for the appeal of the 'UMNO 11' would decide against their interests. Removing Tun Salleh in that context was perceived as a grossly unfair act. A Judge, in the thinking of the average Malaysian, is like a referee in a football match. He has to be neutral. It is wrong to get rid of a referee simply because one fears that his impartiality may lead to one's own defeat! The idea of an impartial Judge is also strongly embedded in the psychic of the rural population. Indeed, what a Judge is, and what his role is, are concepts which are easily understood by the rural community, given its Islamic background. The Qadi who

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mediates in disputes within the community, who is expected to be fair and just in his decisions, parallels the modern Judge. For that reason, the Judge as an institution commands respect and demands reverence. It is because the institution is held in such high esteem that the Government's action against the former Lord President and the two Supreme Court Judges, provoked so much antipathy and even antagonism among the rural voters of Parit Raja. It was seen as an extreme, somewhat arrogant act bereft of respect and consideration for one of the highest offices of the land. In the eyes of rural Malays with their Islamic values and principles of living, the Prime Minister had violated the norms of moderation and restraint. He had abused his power. They felt this way because they also knew that the real motive behind the removal of the Lord President was to ensure that the Prime Minister's position would be secure. When the pursuit of self-interest becomes too vulgar, the rural Malay-Muslim community sometimes displays its revulsion. And when the victim of the pursuit of that self-interest is seen as a pious man, as an innocent human being, one can expect an effusion of sympathy for him.

Erosion of Credibility The assault on the Judiciary, needless to say, It is apparent from our analysis of the perceptions of different groups within the Malaysian public that

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the justifications put forward by Government leaders for their action against the Judiciary have not convinced a lot of people. If it has been difficult to persuade people that the Government was right, it is partly because the sacking of Tun Salleh and of Tan Sri Wan Suleiman and Datuk George Seah came in the wake of a series of events which had already eroded the credibility of the Mahathir administration. Datuk Seri Dr Mahathir Mohamad's restructuring of UMNO to guarantee his absolute control over the party, his amendments to laws affecting freedom of expression and freedom of assembly to reinforce Executive power, his wide-ranging Internal Security Act (ISA) arrests to curb dissent and to discourage the rapidly growing demand for public accountability, had all created serious doubts about the Prime Minister's professed commitment to democratic principles and practices. Indeed, the evidence showed that the Prime Minister was becoming increasingly authoritarian. This is why when he moved against the Lord President it was as if he had taken that ultimate, decisive step to ensure his total control and dominance over the entire political system.

Adverse Impact The assault on the Judiciary, needless to say, is bound to have an adverse impact upon Malaysian society as a whole. Ordinary citizens will have less and less faith in the

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independence and integrity of the Judiciary. This lack of faith will manifest itself especially in litigation involving the State and the interests it represents, both directly and indirectly. The Judiciary for its part - after what it has gone through - may decide that it is safer to serve authority than to seek justice. Subservience and servility may then become acceptable norms. Sycophancy may develop into a fine art. There is no doubt that a Judiciary that can no longer command the respect of the people will sooner or later, bring the political leadership itself into public odium. For the Judiciary's subservience will be attributed to the political leadership's desire for unquestioning obedience to its will. At the same time, a political leadership - as it should be obvious by now - which is not held in check by an independent Judiciary will become more arrogant, more haughty, more authoritarian. Since neither institution nor individual, neither Court nor custom, neither principle nor practice will be able to restrain the leadership's power, it could abuse its authority according to its whims and fancies. Though the destruction of judicial independence has adverse consequences for society, there is enough evidence to suggest that the entire 'suspensions and sackings' episode has

helped to raise public consciousness on certain aspects of democracy. Malaysians at all levels of society - and especially the poor and powerless - are much more aware today than ever before of the significance of an independent Judiciary, of the distinction between law and justice, of how the rule of law can become rule by law, of the separate spheres of authority of the Judiciary, the Executive and the Legislature. Terms and phrases such as 'controlling Judges', 'interfering with the authority of the Judges', 'concentrating power with one man', 'no checks and balances' have seeped into the vocabulary of the people - including those living in rural areas who are often shielded by the authorities from the influence of non-establishment ideas on freedom and democracy.

Indeed, the assault on the Judiciary which is of course part of the larger UMNO crisis has, ironically, accomplished much more by way of mass political education than all the pamphlets and booklets produced on democracy and human rights for the intellectual consumption of the ordinary Malaysian. For that reason it is, in a sense, fortunate that the assault on the Judiciary is so closely intertwined with the crisis in UMNO. It has hastened the diffusion of ideas on the Judiciary and democracy to the padi-roots of our society in an unprecedented manner.

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This is how it should be. For in the ultimate analysis it is not the Courts or the laws, it is not Parliament or the Legislators, it is not the policy-makers or even the political dissidents, who can protect the independence of the Judiciary. It is only the ordinary human being who can ensure that Judges remain free to judge. When the commitment to an independent Judiciary is deeply rooted in the hearts and minds of each and every Malaysian, we can be sure that Judges will be safe and the Judiciary will be secure.